

# Exhibit 13

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2403 a

## SERVICE CONTRACTOR AGREEMENT

THIS AGREEMENT is made and entered into this 19<sup>th</sup> day of September 2001, between AMG Realty Partners, LP (herein "Owner") by and through its agent Jones Lang LaSalle Americas, Inc. ("Agent"), and Pinnacle Environmental Corporation. (herein "Service Contractor").

### WITNESSETH:

WHEREAS, Service Contractor is skilled in the performance of all the Contract Duties (identified below) and has offered to perform all said Contract Duties for Owner with respect to the property located at 170 Broadway New York, NY 10038 (herein "Property").

WHEREAS, Owner is desirous of securing the performance of all the Contract Duties by Service Contractor.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements of the parties, it is agreed as follows:

#### Section 1. Term of Agreement.

Unless sooner terminated as herein provided, the term of this Agreement shall begin on September 19, 2001 (herein "Contract Commencement Date") and shall end on October 5, 2001 (herein "Contract Expiration Date").

#### Section 2. Contract Duties.

From and after the Contract Commencement Date and until the Contract Expiration Date or earlier termination of this Agreement, Service Contractor shall timely and fully perform all of the Contract Duties set forth in Exhibit A, which is attached hereto and incorporated by reference herein. Service Contractor further agrees to perform all of the Contract Duties in a good and workmanlike manner, and in accordance with industry standards established by those engaged in a business similar to that of Service Contractor in performance of the Contract Duties; and to pay for all supplies, fuel, uniforms, equipment, machinery, repairs, transportation, material, labor, insurance premiums of any kind or description, sales taxes, salaries, federal and state employment taxes, any similar payroll taxes relating to employees of Service Contractor, and all other expenses whatsoever incurred in the performance of the Contract Duties; and to obtain and pay for all applicable permits and governmental fees, licenses and inspections necessary and incidental to the performance of the Contract Duties and to otherwise comply with all governmental regulations pertaining to performance of the Contract Duties; and to uniform all employees, servants and agents to the subjective satisfaction of Owner; and to provide a competent and well trained on-site supervisor for performance of the Contract Duties at all times when said Contract Duties are being performed; and to maintain a continuing employee training program so as to insure maximum efficiency of performance of the Contract Duties and to insure the safety of all persons on the Property; and to keep the Property free from accumulation of waste materials or rubbish caused by Service Contractor's operations.

#### Section 3. Service Contractor's Compensation.

Unless this Agreement is terminated prior to the Contract Expiration Date, Owner shall pay Service Contractor compensation, for Service Contractor's performance of the Contract Duties, in the amounts and at the rates established in Exhibit B, which is attached hereto and incorporated by reference herein. Service Contractor shall bill Owner for such compensation not more frequently than monthly.

#### Section 4. Additional Work.

It is understood that, from time to time during the term of this Agreement, Owner may request Service Contractor to perform services or provide materials, which are not set forth in the Contract Duties but are related to the services encompassed within the Contract Duties (herein "Additional Work"). Service Contractor hereby agrees to perform such Additional Work so long as prior to the performance of such Additional Work, Owner shall authorize in writing the scope of such Additional Work and compensation payable to Service Contractor for the full performance of said Additional Work. In the event Service Contractor shall fail to secure such a writing relating to such Additional Work, any such work thereafter performed shall be deemed a part of the Contract Duties and Service Contractor shall not be entitled to any additional compensation therefor.

#### Section 5. Early Termination.

Owner may terminate this Agreement, at any time, and for any or no reason whatsoever, by giving Service Contractor not less than thirty (30) days advance written notice of same, which notice shall specify the effective date of early termination. Service Contractor shall receive compensation for all Work and Additional Work actually performed through the said effective date of early termination. Service Contractor shall not be entitled to any compensation with respect to any period after any such early termination.

#### Section 6. Relationship of Parties.

Service Contractor is retained by Owner only for the purpose and to the extent set forth herein and Service Contractor's relationship with Owner shall, during the entire term of this Agreement, be that of independent contractor so that neither Service Contractor, nor any employee, agent, servant, officer, director or shareholder of Service Contractor, shall be deemed an agent, servant or employee of Owner. Service Contractor agrees to indemnify and hold Owner and Agent and their respective affiliates, and their partners, officers, directors, employees and agents harmless of and from any and all liabilities, claims, demands, damages, and expenses (i) arising from any determination (whether judicially or administratively) that some relationship, other than that of independent contractor, exists between Owner and/or Agent and Service Contractor, or (ii) in connection with hiring, termination, discipline, evaluation and resolution of complaints and grievances of Service Contractor's employees.

#### Section 7. Insurance.

At all times while performing the Contract Duties, Service Contractor shall maintain, at its sole cost and expense, the insurance set forth in Exhibit C, attached hereto and incorporated by reference herein, from insurance companies and in a form reasonably satisfactory to Owner with limits of liability not less than stated in such Exhibit C. Owner shall have the right to inspect and review the policies in their entirety and shall be provided with copies upon request.

#### Section 8. Indemnification.

To the fullest extent permitted by applicable law, Service Contractor shall defend, indemnify and hold harmless Owner and Agent and their respective officers, directors, employees, agents, shareholders, partners, joint venturers, affiliates, successors and assigns from and against any and all liabilities, obligations, claims, demands, causes of action, losses, expenses, damages, fines, judgments, settlements and penalties, including, without limitation, costs, expenses and attorneys' fees incident thereto, arising out of, based upon, or occasioned by or in connection with:



- (a) Service Contractor's performance of (or failure to perform) the Contract Duties;
- (b) a violation of any laws or any negligence, gross negligence or willful misconduct by Service Contractor or its affiliates, subcontractors, agents or employees during performance of the Contract Duties; and/or
- (c) a breach of this Agreement by Service Contractor or any of its affiliates, subcontractors, agents or employees.

The aforesaid obligation of indemnity shall be construed so as to extend to all legal, defense and investigation costs, as well as all other reasonable costs, expenses and liabilities incurred by the party indemnified, from and after the time at which the party indemnified receives notification (whether verbal or written) that a claim or demand is to be made or may be made.

Except as may be otherwise provided by applicable law or any governmental authority, Owner's or Agent's right to indemnification under this section shall not be impaired or diminished by any act, omission, conduct, misconduct, negligence or default (other than gross negligence or willful misconduct) of Owner or Agent or any employee of Owner or Agent who contributed or may be alleged to have contributed thereto.

#### Section 9. Damage Limitation

In no event shall Owner be liable for consequential, incidental or special damages, including without limitation any delay damages, lost opportunity damages or lost profits, incurred by Service Contractor and/or its affiliates, subcontractors, agents or employees in connection with this Agreement.

#### Section 10. Assignment and Delegation.

- 10.01 Service Contractor shall be absolutely prohibited from assigning this Agreement or delegating or subcontracting any of the Contract Duties (or any right, obligation or performance of Service Contractor hereunder), it being agreed that the services to be performed hereunder are personal in nature. Any attempted assignment or subletting of this Agreement or any delegation or subcontracting of any Work or Additional Work without Owner's prior written consent, which may be withheld in Owner's sole and absolute discretion, shall be void and of no force and effect.
- 10.02 Owner may assign this Agreement, at any time, in its sole and absolute discretion, to Owner's nominee by giving Service Contractor written notice of same, which notice shall specify the assignee and effective date of assignment.

#### Section 11. Notices.

Any information or notices required to be given under this Agreement shall be in writing and shall be delivered either by (i) certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid, in the U.S. mail; (ii) a reputable messenger service or a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with such messenger or courier; or (iii) personal delivery with receipt acknowledged in writing, in which case notice shall be deemed delivered when received. All notices shall be addressed as follows:

If to Owner:

AMG Realty Partners, LP  
c/o Jones Lang LaSalle Americas, Inc.

- 17.07 Service Contractor shall promptly remedy all damage or loss to any property at the site or at the Property if such damage or loss is caused directly or indirectly, in whole or in part, by Service Contractor, any subcontractor or anyone directly or indirectly performing the Contract Duties.
- 17.08 Service Contractor shall not permit any discrimination against or segregation of any person or group of persons in connection with the performance of this Agreement on account of sex, disability, marital status, age, race, religion, color, creed, national origin or ancestry nor shall Service Contractor or any person claiming under or through Service Contractor, establish or permit any such practice or practices of discrimination or segregation in connection with the performance of the Contract Duties and Service Contractor's other obligations under this Agreement.
- 17.09 All drawings, specifications, studies, analyses, opinions, recommendations, reports, or other information and material of any nature, and copies thereof, (i) provided to Service Contractor by Owner or Agent; (ii) prepared pursuant to this Agreement; or (iii) to which Service Contractor otherwise gains access during the performance of Contract Duties are the property of Owner and are to be treated as confidential. They are not to be disclosed to others without Owner's prior written approval and are to be delivered to Owner on request and in all events upon completion of the Contract Duties, or termination of this Agreement pursuant to the terms hereof. Service Contractor shall advise its affiliates, subcontractors, agents and employees having access to said information of this obligation of confidentiality and bind such parties to this same obligation. No articles, papers or treatises related to or in any way associated with the Contract Duties performed pursuant to this Agreement shall be submitted for publication without Owner's prior written consent.
- 17.10 Service Contractor represents and warrants to Owner that all software provided to Owner under the terms of this Agreement, or incorporated in any equipment or systems provided to Owner under this Agreement, or used by Service Contractor in connection with the performance of the Contract Duties hereunder, before, during or after the calendar year 2000, shall, at no additional cost to Owner, be "Century Date Compliant". For purposes of this Agreement, "Century Date Compliant" shall mean that such software shall not provide or cause invalid and/or incorrect results in the operation of any building equipment, systems or components located within or servicing the Property, and that such software shall, at a minimum, provide for (i) date century recognition, (ii) calculations that accommodate same century and multicentury formulas and date values, (iii) date data interface values that reflect the century and (iv) accurate calendar year 2000 leap year calculations.

#### Section 18. Miscellaneous.

- 18.01 Time of Essence. Service Contractor acknowledges that time is of the essence in regard to its performance under this Agreement.
- 18.02 Agent. All references to "Agent" contained in this Agreement are to Jones Lang LaSalle Management Services, Inc. solely in its capacity as the duly authorized Agent of Owner. No reference to "Agent" herein contained shall be construed as creating any liability of Agent for any obligation in any capacity other than as the duly authorized Agent of Owner.
- 18.03 No Liens. Service Contractor shall neither suffer nor permit the attachment of any liens upon the Property as a direct result of Service Contractor's performance of the Contract Duties.
- 18.04 Cure of Service Contractor's Default. If Service Contractor shall default in the performance of the Contract Duties or any other duty imposed upon Service Contractor hereunder, Owner may (but shall not be required to), without notice to Service Contractor and with or without terminating this



Agreement, cure and rectify such defaults and either deduct the reasonable cost of cure and rectification from compensation due to Service Contractor hereunder or Owner may directly bill Service Contractor for such reasonable costs.

18.05 Force Majeure.

- a. Any delay or failure by either party hereto in the performance of its obligations hereunder shall not constitute a default hereunder or give rise to any claim for damages if, and only to the extent and for such period of time that, (i) such delay or failure is caused by an event or occurrence beyond the control and without the fault or negligence of such party or any subcontractor, materialman, or other party acting under or through such party, and (ii) said party is unable to prevent such delay or failure through the exercise of reasonable diligence. Events that shall be deemed to be beyond the control of the parties hereto shall include, but not be limited to: acts of God or the public enemy; expropriation or confiscation of facilities by governmental or military authorities; changes in applicable laws; war, rebellion, sabotage or riots; floods, unusually severe weather that could not reasonably have been anticipated; fires, explosions, or other catastrophes; or other similar occurrences.
- b. Notwithstanding any other provision of this section 18.05, even though the performance of Service Contractor or a subcontractor or delivery of equipment or materials by a materialman is delayed by an unforeseen event or occurrence beyond the control of Service Contractor, such subcontractor or such supplier of equipment or materials as provided in subsection 18.05(a), Service Contractor hereby agrees to use its best efforts to secure alternate sources of services, equipment or materials, if available. To the extent that Service Contractor fails to secure available alternate sources of services, equipment or materials, Owner is entitled to secure such alternate sources and offset any amounts expended on such alternate sources from amounts due or owing to Service Contractor under this Agreement to the extent that such amounts exceed the price allocations for the goods and services agreed upon in this Agreement. Service Contractor shall not be paid any additional compensation by Owner due to an unforeseen or uncontrollable event or occurrence of the type described in this section 18.05.
- c. In order to be entitled to an excuse for any delay or failure to perform under this Agreement pursuant to this section 18.05, the party claiming such excuse shall promptly give written notice to the other party hereto of any event or occurrence which it believes falls within the contemplation of this section 18.05.

18.06 Estoppel Certificate. Upon request of Agent or Owner, Service Contractor agrees to provide to Owner, within five (5) days after receipt of written request therefor, a written statement certifying that this Agreement is in full force and effect, that Owner and Service Contractor are current in their respective obligations hereunder and that Owner is not in default under any provision of this Agreement.

18.07 Survival. The provisions of sections 6, 8, 9, 11 and 15 of this Agreement shall survive the expiration or early termination of this Agreement.

18.08 The individual executing this Agreement on behalf of Service Contractor personally certifies and warrants that by his or her execution hereof, this Agreement shall be legally binding on and enforceable against Service Contractor.

Section 19. Entire Agreement

**EXHIBIT A - CONTRACT DUTIES  
SCOPE OF WORK**

The following is a proposal for all labor, materials, equipment and insurance necessary to perform the clean up at 170 Broadway.

Pinnacle will perform work simultaneously on 4 consecutive floors. Areas that received substantial damage will have to be reviewed on a case by case basis with direction from Agent or Owner and their consultant. The main roof and courtyard area shall be cleaned of all debris. Any ductwork found to high levels of contamination shall be cleaned at the discretion of the environmental consultant.

Schedule: Pinnacle will complete all interior cleaning over a 4-day period, working (12) hour shifts, (double shifts will be worked if required).

**Terms and Conditions:**

- 1) Ten million Dollar Occurrence Form Asbestos General Liability Insurance is to be supplied by Pinnacle.
- 2) Notifications to be filed by pinnacle: NYCDEP, NYSDOL, &EPA &Dept of Bldg.
- 3) Work area must be cleared to allow non-restricted access to removal zones.
- 4) Work to performed on regular time
- 5) Work to be performed on overtime
- 6) Work to be performed on weekends
- 7) In accordance with Title 15, RCNY asbestos regulations, air sampling and testing must be performed by an independent laboratory employed by the property owner.
- 8) Temporary power to be provided by others.
- 9) Hot and cold water connections to be provided by others.
- 10) Not responsible for damage to finish surfaces due to staples, glue, nails or tape.
- 11) Not responsible for delays as a result of restrictions imposed by NYC due to the current emergency.

See attached Exhibit C for the Direction as to the Scope of Work.